

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ANDRE L. REVIS,

Plaintiff,

v.

MOORE, *et al.*,

Defendants.

Case No. 1:22-cv-01189-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO  
RANDOMLY ASSIGN DISTRICT JUDGE TO  
ACTION

FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION, WITHOUT PREJUDICE,  
FOR FAILURE TO OBEY COURT ORDER  
AND FAILURE TO PROSECUTE

(ECF No. 4)

**FOURTEEN (14) DAY DEADLINE**

**I. Background**

Plaintiff Andre L. Revis ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983.

On September 26, 2022, the Court issued an order directing Plaintiff to submit a completed application to proceed *in forma pauperis* or pay the \$402.00 filing fee to proceed with this action and to file a signed complaint, not to exceed 25 pages in length, or a notice of voluntary dismissal. (ECF No. 4.) The Court expressly warned Plaintiff that failure to comply with the Court's order would result in dismissal of this action, without prejudice. (*Id.* at 2.)

On November 1, 2022, the Court received the \$402.00 filing fee for this action from the State of California on behalf of Andre Revis V97325. (Receipt #CAE100051557, dated

November 1, 2022.) However, the Plaintiff did not file a signed complaint or a notice of voluntary dismissal. The deadline has expired, and Plaintiff has failed to respond to the Court's order or otherwise communicate with the Court regarding the filing of a signed complaint.

## **II. Failure to Prosecute and Failure to Obey a Court Order**

### **A. Legal Standard**

Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to comply with court order).

In determining whether to dismiss an action, the Court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

### **B. Discussion**

Here, Plaintiff's signed complaint or notice of voluntary dismissal is overdue and he has failed to comply with the Court's order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.

1 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
 2 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d  
 3 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose  
 4 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
 5 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Products*  
 6 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

7 Finally, the Court’s warning to a party that failure to obey the court’s order will result in  
 8 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;  
 9 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s September 26, 2022 order  
 10 expressly warned Plaintiff that his failure to comply with the Court’s order would result in  
 11 dismissal of this action. (ECF No. 4, p. 2.) Thus, Plaintiff had adequate warning that dismissal  
 12 could result from his noncompliance.

13 Additionally, at this stage in the proceedings there is little available to the Court that  
 14 would constitute a satisfactory lesser sanction while protecting the Court from further  
 15 unnecessary expenditure of its scarce resources. As Plaintiff has paid the filing fee, it does not  
 16 appear monetary sanctions will be of use, and the preclusion of evidence or witnesses is likely to  
 17 have no effect given that Plaintiff has ceased litigating his case. This action cannot proceed  
 18 without the filing of a properly signed complaint.

### 19 **III. Recommendation**

20 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
 21 district judge to this action.

22 Further, the Court finds that dismissal is the appropriate sanction and HEREBY  
 23 RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court  
 24 order and for Plaintiff’s failure to prosecute this action.

25 These Findings and Recommendation will be submitted to the United States District Judge  
 26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
 27 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written  
 28 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s

Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: November 29, 2022

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE